

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



2578

SUBMITTAL DATE:
September 30, 2016

FROM : ECONOMIC DEVELOPMENT AGENCY AND
RIVERSIDE UNIVERSITY HEALTH SYSTEM

SUBJECT: Riverside University Health System Emergency Department Modular Swing Space Office – California Environmental Quality Act Exempt, Approval of Project Budget and Approval of Lease Service Agreement with Design Space Modular Buildings, Inc., District 5, [\$591,896], RUHS Enterprise Fund 40050 - 100%

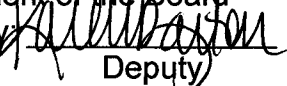
RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Riverside University Health System (RUHS) Emergency Department (ED) Modular Swing Space Office (Modular Space) Project, located at 26520 Cactus Avenue, Moreno Valley, California, is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301, Class 1 Existing Facilities Exemption, Section 15303 (e), Class 3 New Construction or Conversion of Small Structures, Section 15304 (e), Class 4 Minor Alterations to Land, and Section 15061 (b)(3) "Common Sense" Exemption;
2. Approve a project budget of \$591,896 for the project, and authorize the use of RUHS Enterprise Fund 40050, including reimbursement to the Economic Development Agency (EDA) for incurred project expenses;
3. Approve the lease service agreement with Design Space Modular Buildings, Inc. (Design Space) of Pasadena, California, for the lease of a modular for office space in the amount not-to-exceed of \$180,909;
4. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of fiscal funding and as approved by County Counsel to: execute the lease service agreement and amendments with Design Space that do not change the substantive terms of the agreement; and sign amendments to the compensation provisions that do not exceed 10% annually;

MINUTES OF SUPERVISORS

On motion of Supervisor Jeffries, seconded by Supervisor Tavaglione and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Tavaglione, Washington and Ashley
Nays: None
Absent: Benoit
Date: November 1, 2016
xc: EDA, RUHS, Purchasing,

Kecia Harper-Ihem
Clerk of the Board
By 
Deputy

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RECOMMENDED MOTION: (Continued)

5. Authorize the Purchasing Department to execute the consultant service agreements in accordance with the applicable Board policies; and
6. Delegate project management authority for the project to the Assistant County Executive Officer/EDA in accordance with applicable Board policies, including the authority to utilize consultants on the approved pre-qualified list for services in connection with the project, and are within the approved project budget;
7. Recommend the RUHS ED Modular Space Project be added to the Capital Improvement Program Plan list.

Policy

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 567,506	\$ 24,390	\$ 591,896	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS: RUHS Enterprise Fund 40050 - 100%			Budget Adjustment: No	
			For Fiscal Year: 2016/17-2017/18	

C.E.O. RECOMMENDATION: Approved

BACKGROUND:

Summary

On August 23, 2016, Item 3-34, the Board of Supervisors (Board) approved the plans and specifications for the bidding and construction of the RUHS ED Expansion and Remodel project. Commencement of the ED Expansion project will displace RUHS hospital personnel from the hospital during the course of construction. The ED Expansion project requires the Modular Swing Space to be in place before significant work can begin.

Miller Architectural Corporation was selected to design plans for the RUHS modular offices. Riverside County Purchasing (Purchasing) issued a Request for Proposal (RFP) for the lease and fabrication of the modular offices. Two firms responded to the RFP and Design Space was selected as the responsive and responsible bidder. In an effort to allow the ED Expansion project to begin on schedule, EDA issued a Purchase Order for design services in the amount of \$3,000 to Design Space; a Sole Source directive has been issued in the amount of \$50,000 to commence the fabrication of the modular office space.

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BACKGROUND:

Summary (Continued)

With certainty, there is no possibility that the project may have a significant effect on the environment. The project, as proposed, is limited to the placement of a temporary modular building at an existing facility on top of a surface parking lot. The use of the parking lot space would be a minor temporary use of land having no permanent effects on the environment. The building would be a temporary accessory structure that would allow for the continued operation of the RUHS Medical Center while the ED Expansion and Remodel is underway. The modular building would not change and would not result in an increase in capacity or intensity of use at the RUHS Medical Center. The project will not result in any specific or general exceptions to the use of the categorical exemption as detailed under State CEQA Guidelines Section 15300.2. The project will not cause an impact to an environmental resource of hazardous or critical concern nor would it include unusual circumstances which could have a potential significant effect on the environment. It would not result in impacts to scenic highways, hazardous waste sites, historic resources, or other sensitive natural environments, or have a cumulative effect to the environment. Therefore, the RUHS ED Modular Space project is exempt as the project meets the scope and intent of the Common Sense Exemption identified in Section 15061 (b)(3), the Class 1 Categorical Exemption identified in Section 15301, and the Class 3 Categorical Exemption identified in Section 15303 (e), and Class 4 Categorical Exemption identified in Section 15304 (e).

Impact on Citizens and Businesses

Significant progress on the RUHS ED Expansion project cannot be achieved until the modular offices are in place and functional. Staff within the hospital must be relocated to new temporary modular offices in order for the multi-phased RUHS ED Expansion project to proceed as scheduled and help expedite the project.

Additional Fiscal Information

(Commences on Page 4)

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Additional Fiscal Information

The approximate allocation of the project budget is as follows:

PROJECT BUDGET LINE ITEMS	BUDGET CATEGORY	PROJECT BUDGET AMOUNT
Architectural Design	1	15,750
Construction Management	2	5,000
Utility Infrastructure	3	174,903
Lease Agreement for Modular	4	0
Portable Installation	4a	134,983
Portable Tear Down	4b	13,622
Portable Lease Cost – 12 Months	4c	32,304
Project Management	5	15,984
Fixtures, Furnishings, Equipment	6	112,000
Other Soft Costs / Specialty Consultants	7	18,500
Project Contingency	8	53,850
Information Technology	9	15,000
Project Budget		\$ 591,896

The cost for design and fabrication of the modular are not included within the lease agreement; purchase orders have been issued separately for the services. Expenditures for FY 2016/17 are estimated at \$567,506 which includes the one time delivery costs and eight months of the lease for the modular; expenditures for FY 2017/18 are estimated at \$24,390 which includes the onetime return fees and four remaining months of the lease. Costs will be 100% funded through the RUHS Enterprise Fund 40050, therefore no departmental budget adjustment is required at this time.

Attachment:

Sole Source with Design Space Modular Buildings, Inc.
Lease Agreement with Design Space Modular Buildings, Inc.



Date: September 29, 2016
From: Vincent Coffeen, Assistant Director
To: Purchasing Agent – Joe Angelone, PCS
Via: Project Management Office
Subject: Sole Source Procurement - Request for Modular Trailer Offices to provide Swing Space for the RUHS Emergency Department Expansion Remodel Project
Project Number: FM08430008125

The below information is provided in support of my Department requesting approval for a sole source. (*Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.*)

1. **Supplier being requested:** Design Space Modular Buildings, Inc.
2. **Vendor ID:** 0000117462
3. **Supply/Service being requested:** Manufacture and installation of modular offices for installation in the parking lot adjacent to the RUHS Emergency Department.
4. **Alternative suppliers that can or might be able to provide supply/service and extent of market search conducted:** Atlas Performance Industries
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:** Time is of the essence. The RUHS Emergency Department Modular Swing Space Office project is essential to the delivery of the Emergency Department Expansion project which cannot commence until the modular trailer offices are installed and operational. Design Space Modular can deliver in 45-60 days whereas Atlas Performance requires 120 days.
6. **Reasons why my department requires these unique features and what benefit will accrue to the county:** The RUHS Emergency Department Expansion project will be delayed significantly unless Design Space Modular is used. Delaying the renovation and expansion of the Emergency Department project will greatly impact the urgent care available to county citizens.
7. **Period of Performance:** From: 45 to 60 days
(Total number of years= 0.33)
Is this an annually renewable contract? No Yes
Is this a fixed-term agreement: No Yes

(A fixed-term agreement is set for a specific amount of time; it is not renewed annually. Ensure fixed-term agreements include a cancellation, non-appropriation of funds, or refund clause. If there is no clause(s) to that effect, then the agreement must be submitted to the Board for approval.)



8. Identify all costs for this requested purchase. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)

DESCRIPTION:	FY 16/17	FY 17/18	Total
One-time Costs:			
New Custom Modular Building Modification; Ramps and Landings	50,000	0	50,000
Ongoing Costs:			
N/A	0	0	0
Service:			
N/A	0	0	0
Total Costs:	50,000	0	50,000

Note: Insert additional rows as needed

9. Price Reasonableness: An RFP was developed and distributed by County Purchasing and Design Space was the lowest, responsive bid.

10. Projected Board of Supervisor Date (if applicable): 10/25/2016



[Signature]
Department Head Signature
(Or designee)

Jeffrey Van Wagenen, Managing Director 9.30.16
Print Name Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ 50,000.00 One time Annual Amount through 11/16/16
(Date)

[Signature] 9/30/16 17-110
Purchasing Agent Date Approval Number
(Reference on Purchasing Documents)

List Attachments:

N/A

BOS DATE 10/25/16



LEASE AGREEMENT NO: F003917

CUSTOMER NUMBER: _____

CUSTOMER PO/REF. NUMBER: _____

RETURN EQUIPMENT TO DSMBI:

10631 Banana Ave.
Fontana, CA 92337
Phone: 909-349-2800

Equipment Located At	Contact Info:	
R.U.S.H. Office	Name:	Chuck Waltman
26520 Cactus Ave	Phone:	951.955.4897
Riverside, CA. 92555	E-mail:	CWaltman@rivcoeda.org
Riverside County 8% tax rate		

DESIGN SPACE MODULAR BUILDINGS, INC. (DSMBI) hereby leases the equipment specified below (the "Equipment") to:

Lessee Name (Customer) & Address
County of Riverside Purchasing and Fleet Services Dept. 2980 Washington St Riverside, CA. 92504

Customer hereby leases Equipment from DSMBI for a minimum period of 12 months (the "Minimum Lease Period") from the start of the lease term in accordance with the terms and conditions of this Lease Agreement including the terms and conditions set forth on the attached page (this "Lease"). Rental month is defined as a thirty-day period. Customer agrees to pay DSMBI without demand and in advance the monthly rental and other charges on the due dates set forth in this Lease. The anticipated delivery date for the Equipment, subject to Section 3(c) on the attached page, will be on or about the 7th day of December, 2016.

Unit No.	Serial No.	Width	Length	Monthly	Weekly	Daily	Insurance Value
TBD	TBD	72	60	\$2,692	\$897.34	\$179.47	\$251,944
				Monthly	Weekly	Daily	
Renewal Option 1 (12-24 months) (Taxable)*				\$2,908.34	\$969.45	\$193.89	Buyout after 36 mo.
Renewal Option 2 (24-36 months) (Taxable)*				\$3,053.71	\$1,017.91	\$203.59	\$235,148

ONE TIME CHARGES	AMOUNT	MONTHLY CHARGES	AMOUNT
<i>Billed At Time Of Delivery</i>		BUILDING *	\$2,692
• DELIVERY (405)	\$11,250	ADDITIONAL LEASE COSTS	0
• BLOCK AND LEVEL/SET-UP	\$29,381	OTHER -	0
• ANCHORS * Qty: 28	\$2,106.49	INSURANCE WAIVER @ 1.00/day per floor	0
• SKIRTING * Ft: 264	\$3,972.23		0
• MODIFICATIONS: MATERIAL *	\$54,000		0
• RAMP & LANDING: MATERIAL *	\$29,385		0
• RAMP DELIVERY & SET-UP:	\$4,889		0
			0
<i>Billed At Time Of Return</i>			0
• RAMP TEAR DOWN & RETURN	\$4,264		0
• RETURN DELIVERY	\$2,243	*TAXABLE ITEMS	0
• UNBLOCK/TEARDOWN	\$5,425	TOTAL MONTHLY (Excl Tax)	\$2,692.00
• ANCHOR & SKIRT REMOVAL	\$1,690	DOH/DMV/PPT Tax*	\$78.18

*** Billed at current rate at Termination

Advance Payments	Description of Charges / Payment to be Applied	Amount
Applied to 1 st Invoice(s)		
Applied to Final Invoice(s)		

No agent, employee or representative of DSMBI has any authority to make any representation or warranty concerning the Equipment that is not specifically included in this Lease. Unless specifically identified in this Lease, this Lease supersedes all prior negotiations, proposals and documents. This Lease will not be subject to any additional provision that may be contained in the Customer's purchase order, although the parties may use Customer's purchase order number as a convenient reference for invoicing purposes. Steps not returned are billed at \$687.00/each. Keys not returned are billed at \$50.00/each.

Signed by duly authorized agents, with the intent to be legally bound, this _____ day of _____, 2016.

By: _____
DESIGN SPACE MODULAR BUILDINGS INC.

By: _____
CUSTOMER OR AUTHORIZED AGENT

Name: Mike Forrest
SALES REPRESENTATIVE

Name: _____
(Please Print)

TERMS AND CONDITIONS OF LEASE AGREEMENT

1. LEASE

This transaction is a lease and not a sale. Customer does not acquire through this Lease or by payment of rental under this Lease any right, title or interest in or to the Equipment, except the right to possess and use the Equipment so long as Customer is not in default under this Lease.

2. RENTAL AND OTHER PAYMENTS

- (a) The start of the lease term is the date on which DSMBI substantially completes its scope of work for installation, unless otherwise agreed to among the parties. Monthly rental will accrue through and including the month in which the later of the Return Date or End of the Term occurs. The "Return Date" is the date on which the Equipment is returned to DSMBI in accordance with the terms of this Lease. The "End of the Term" is the date on which the term of this Lease is to expire either originally, under a renewal term or under month-to-month renewals as contemplated by this Lease, Rental and such other charges will be prorated on a daily basis where necessary. Unless otherwise specified in this Lease, charges for delivery and installation, initial month's rent and any applicable initial charges as outlined on the front of this agreement will be due and payable at the start of the lease term, and charges for teardown and return will be due and payable at the earlier of the Return Date or the End of Term. After payment of the initial month's rent, each month's rent thereafter is due and payable without demand and in advance (i) at the end of each thirty (30) day period following the commencement of the lease term, if a rental month is defined on the first page of this Lease as a thirty-day period or (ii) on the first of each month immediately following the month in which this lease commences, if a rental month is defined on the first page of this Lease as a calendar month. All other sums payable by Customer under this Lease are due and payable when invoiced. Unless agreed otherwise, all payments made under this Lease will be made by Customer's check drawn on its regular bank checking account or such other form of payment as is acceptable to DSMBI. All payments by Customer will be made without setoff or deduction of any kind.
- (b) Customer will pay DSMBI for any and all sales and use taxes, other direct taxes and registration fees imposed by any city, county, state, or federal government or other taxing authorities and related directly or indirectly to the Equipment or its use, excluding federal or state taxes relating to income (all of the foregoing that Customer is to pay, "Taxes"). Taxes may be allocated by DSMBI on either an individual or prorated basis for any item of Equipment based on purchase price, value, possession, use, location, rentals, delivery or operation of such Equipment. Taxes may include an allocation on a statewide basis of locally imposed taxes. Customer's obligations under this Subsection will survive the termination of this Lease.
- (c) For Customer's convenience, DSMBI intends to issue invoices for amounts due under this Lease. If Customer fails to pay any amount due within twenty (20) days of the due date, DSMBI may impose a charge on such amount at one and one-half percent (1-1/2%) per month or the highest rate permitted by law, whichever is lower, from the due date until payment in full is received by DSMBI.

3. Delivery and Installation

- (a) Customer will provide free and clear access for delivery of the Equipment by standard mobile transport vehicles. Customer will be solely responsible, at its cost, for preparation of the site on which the Equipment is to be used (the "Site"), including any required structural or grade alterations and identification of utility lines. Customer will provide firm and level ground on no more than six-inch (6") slope from one end to the other for safe and unobstructed installation for the Equipment. Site election is the sole responsibility of Customer. **DSMBI ASSUMES NO LIABILITY OR OFFERS ANY WARRANTY FOR THE FITNESS FOR ADEQUACY OF THE UTILITIES AVAILABLE AT THE SITE.**
- (b) Customer will have sole responsibility, at Customer's cost, to obtain any and all licenses, titles, building and other permits and any other approvals and certificates as may be required by law or otherwise for the installation and placement of the Equipment and Customer's lawful operation, possession or occupancy of the Equipment, Customer agrees that all certificates of title or registration applicable to the Equipment will reflect DSMBI's ownership of the Equipment.
- (c) DSMBI's delivery of the Equipment is subject to delays in manufacturing, modification, delivery or installation due to fire, flood, windstorm, riot, civil disobedience, strike or other labor actions, acts of God, or any circumstances beyond DSMBI's control (including but not limited to breaches by DSMBI's sub-contractors or manufacturers) which delay the manufacture or modification of products or the making of deliveries in the normal course of business.
- (d) The prices for delivery, installation, teardown, return delivery and other "one-time" charges, the due dates of such charges and the start date of this Lease assume accuracy of the information given to DSMBI with respect to site conditions and locations and are subject to adjustment to the extent that the timing of or physical nature of access to the Site is or becomes limited, the Site does not have adequate load bearing or topographic qualities or is otherwise not properly prepared, utilities are not correctly located, provision of utilities is not timely or applicable licenses or permits are not provided in a timely manner or Customer otherwise delays completion of DSMBI's scope of work.

4. Maintenance of Equipment

- (a) Customer will not move or in any way modify the Equipment without written consent of DSMBI. Notwithstanding DSMBI's consent to Customer's modification of the Equipment, Customer is liable for the cost of the removal of such modification or restoration of the Equipment upon the termination of this Lease for the modified Equipment. DSMBI may place its name on the Equipment, and Customer will assure that such name is not removed or concealed in whole or in part.
- (b) Customer, at Customer's sole cost, will keep the Equipment at all times until the Return Date in good repair and operating condition, return it in the same condition it was delivered subject to ordinary wear and tear, and free of any and all liens and encumbrances. DSMBI will have the right to inspect the Equipment from time to time until the Return Date and if DSMBI believes the Equipment to be misused, abused or neglected, DSMBI may summarily remove and repossess the Equipment at Customer's cost.
- (c) DSMBI will warrant the structural integrity of the building(s) and any defect not caused by excessive wear and tear during the lease term, including damage caused by extreme wear from the environment where the customer locates the equipment. However, the Customer will be responsible for normal maintenance such as changing HVAC filters, light bulbs, janitorial services, and other minor repairs. DSMBI will be provided reasonable notice and time to correct defects.

- (d) Customer will perform, execute and comply with all Laws, which in any way affect the use, operation, maintenance, or storage of the Equipment. "Laws" means all laws, rules, regulations or orders of any governmental agency or instrumentality of the United States, Canada, any state province, municipality or other local government and all orders, writs and decrees of any court, tribunal or administrative agency, in any case which now exist or hereafter arise (including but not limited to laws governing Hazardous Substances and other environmental risks and the Americans with Disabilities Act). Customer will not make or permit any unlawful use or handling of the Equipment.
- (e) HAZARDOUS SUBSTANCES. (i) "Hazardous Substances" means hazardous, toxic, radioactive or bio-hazardous substances or petroleum products. (ii) Customer will not use or store Hazardous Substances in the Equipment, except such substances and in such quantities as would be normal in the operation of a commercial office. Customer will not locate the Equipment at a remediation or nuclear site or use the Equipment for medical laboratory testing. (iii) Ordinary wear and tear does not include contamination by Hazardous Substances. If any returned Equipment is found to have been contaminated by Hazardous Substance during Customer's possession, DSMBI may charge Customer for the clean up or may require Customer to purchase the Equipment at the then current market price charged for an uncontaminated unit.
- (f) Customer agrees that any person other than Customer or its agents, employees or invitees will not occupy the Equipment leased hereunder. The Equipment will not be used for residential or dormitory purposes.
- 5. NO WARRANTY FOR MERCHANTABILITY OR FITNESS**
THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, AND ALL WARRANTIES OF ANY KIND, INCLUDING ANY EXPRESSED OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE, ARE HEREBY EXCLUDED BOTH AS TO THE EQUIPMENT AND AS TO ANY INSTALLATION, MAINTENANCE OR REPAIR WORK PERFORMED BY DSMBI ON THE EQUIPMENT.
- 6. Limitation of Damages**
Customer does hereby expressly waive any and all claims and demands for loss of profits or other alleged consequential, incidental or punitive damages arising out of or in connection with this Lease. DSMBI is not liable for any loss or damage to any property stored, located or transported in, upon, under or around any Equipment and Customer does hereby waive any and all claims and demands for any such loss or damage.
- 7. End of Lease**
- (a) Unless specified otherwise, Customer must give DSMBI sixty (60) day's prior written notice of the date on which the Equipment is to be returned.
- (b) If Customer, without any further written agreement, continues to possess or occupy the Equipment after the expiration of the initial and any renewal term of Lease, with or without consent of DSMBI, Customer will then be deemed to have renewed this Lease on a month-to-month basis subject to such rate as DSMBI declares to be in effect (and in the absence of such declaration at the last monthly rate applicable to the Equipment), and DSMBI may terminate such month-to-month extensions at any time.
- (c) If, at any time after the initial or any renewal term (or at DSMBI's request at any time this Lease is on a month-to-month basis), DSMBI requests the return of the Equipment, Customer will return the Equipment to DSMBI, within five (5) days, at DSMBI's designated address, at Customer's sole cost. Additional charges will apply if DSMBI must return the building and the building's path of removal is blocked, obstructed, utilities are not disconnected, require equipment beyond a truck, or impaired in any way. Missing accessories, attachments or other items, repairs of any kind and restoration to original specifications whether due to Customer alterations or otherwise will remain the sole responsibility of Customer, normal wear and tear excepted.
- (d) Customer may terminate this Lease prior to the expiration of the Minimum Lease Period, subject to all terms and conditions of this Lease, and the Customer will pay (in addition to tear-down and return charges) the following termination charges:
- i) If Customer is the first user of the Equipment: the remaining unpaid rental charges for the Minimum Lease Period;
- ii) If Customer is not the first user: The lesser of the remaining term or, (A) if the Minimum Lease Period ("MLP") is less than three (3) rental months, four (4) times the Adjusted Weekly Lease charge ("AWLC"); if the MLP is between three (3) rental months and six (6) rental months, inclusive, eight (8) times the AWLC; if the MLP is more than six (6) rental months but one (1) year or less, twelve (12) times the AWLC; if the MLP exceeds one (1) year, fourteen (14) times the AWLC for each year, or portion thereof, of the portion of the MLP cancelled.
- iii) The "Adjusted Weekly Lease Charge" or "AWLC" means the Weekly Lease Charge less that portion representing amortization of any delivery, set-up, teardown, return or similar one-time charges and customer-requested modifications not provided as a separate charge under the terms of this Lease (the "Amortized One-Time Costs"). In addition to the termination charges outlined above, Customer will pay in full the unpaid Amortized One-Time Costs and rental for ancillary equipment such as steps, decks, and ramps. In no case will the termination charges be in excess of the rental charge for the remainder of MLP.
- 8. Indemnification**
Customer hereby specifically indemnifies, agrees to defend and holds harmless DSMBI, its employees and agents from any and all loss, claims, liabilities, damages, fines, forfeitures, seizures, penalties and expenses (including attorneys' fees and investigative costs) (collectively "Losses") that may arise from or in connection with:
- (a) The loss of or damage to the Equipment prior to the Return Date because of collision, fire, lightning or theft, flood, windstorm or explosion, civil disturbance or riot or any other peril or casualty;
- (b) The death of or injury to, including but not limited to, damage to the property of, any person (other than the Equipment) as a result of, in whole or in part, the use or condition prior to the Return Date of the Equipment;
- (c) Any act or omission of Customer in violations of this Lease;
- (d) The actual or alleged storage maintenance, use, handling, repair, or operation of the Equipment, prior to the Return Date, including but not limited to any failure to use anchor straps, any work done on, or any materials supplied to or in connection with operation, maintenance, possession or storage of the Equipment and any loss or damage to anything stored in any of the Equipment; and
- (e) Any damage to Customer's property or the property of any third parties incurred during or in connection with the fulfillment of Customer's obligations by or on behalf of DSMBI or the repossession or return of Equipment by DSMBI in accordance with the terms of this Lease.
- The obligations contained in this Section 8 will survive expiration or termination of the term of this Lease and the Return Date. The indemnifications contained in this Section 8 will apply to Losses whether they are asserted before or after the Return Date.

9. Insurance

- (a) Customer, at Customer's sole cost, will procure and keep in full force and effect, from the initial delivery date until the return of all Equipment the following policies of insurance satisfactory to DSMBI as to the insurer and as to the form and amount of coverage, with premiums prepaid:
 - i) Commercial General Liability Insurance with a minimum combined single limit of \$1,000,000 per occurrence, written on an occurrence form, including coverage for premises, operations, contractual liability, broad form property damage, independent contractors and personal injury liability naming DSMBI as an additional insured.
 - ii) Commercial Property Insurance protecting against all loss and damages, at full replacement cost, sustained or suffered due to the loss of or damage to the Equipment as a result of collision, fire, lightning, theft, flood, windstorm, explosion or any other casualty, naming DSMBI as a loss payee, with a maximum deductible of \$500.
- (b) Customer will deliver certificates evidencing all such insurance to DSMBI within fourteen (14) days after delivery of the Equipment to Customer's site, time being of the essence; except that, if Customer elects to enroll in the Damage Waiver Option, Customer will not have to deliver certificates of insurance to DSMBI for the type of risks covered by the Damage Waiver Option as elected by Customer. Each certificate will state that such insurance will not terminate or be materially changed without thirty (30) days' prior written notice to DSMBI.
- (c) If Customer fails to deliver the insurance certificate as required by paragraph (b) on the date required, Customer will be in default under this Lease. In addition to all the other remedies for default under this Lease, DSMBI may (i) impose upon Customer a one-time fee for insurance processing of One Hundred Dollars (\$100) and (ii) assess as additional rent an uninsured lessee fee of ten percent (10%) of the monthly rental from the start of the lease term until the required insurance certificate is delivered to DSMBI.
- (d) Obtaining insurance as described above will not affect Customer's obligations and indemnities under this Lease, and the loss, damage to, or destruction of any of the Equipment will neither terminate this Lease nor, except to the extent that DSMBI is actually compensated by insurance paid for by Customer, relieve Customer of any of Customer's liability under this Lease.

10. Damage Liability Waiver

- (a) In certain circumstances, Customer may choose to accept a Damage Waiver Option to cover damage to the Equipment (the "Damage Waiver Option"). If the Damage Waiver Option is available and Customer, in writing prior to delivery of the Equipment to the site, elects to enroll in the Damage Waiver Option, then, Section 10(b) will apply.
- (b) If the Damage Waiver Option is properly elected and so long as Customer timely pays the additional fee specified for such Damage Waiver Option, Customer will not be required, under the terms of this Lease, to carry any additional commercial property insurance as required by Section 9(a) (ii) and Customer will not be liable to DSMBI in excess of \$500 per unit of Equipment for loss or damage specified in Section 8(a), except customer will not be relieved of liability if Customer violates any other provision of this Lease or if damage results from theft, vandalism, negligence, misuse or abuse. **THE DAMAGE WAIVER IS NOT INSURANCE COVERAGE.**
- (c) Either party may cancel customer's acceptance of the Damage Waiver Option, or fees for the Damage Waiver Option may be changed upon thirty (30) days prior written notice. If the Damage Waiver Option is, for any reason, cancelled, Customer will provide to DSMBI evidence of policies of insurance as set forth in Section 9 (a) (ii), as appropriate, within ten (10) days prior to the effective date of such cancellation.
- (d) The limitation of liability under the Damage Waiver Option does not extend to the transportation of Equipment or its contents, or to steps, decks and ramps and, only extends to Equipment installed on ground level with properly installed tie-down anchors.
- (e) The Damage Waiver Option will not be binding upon DSMBI unless any loss, damage, injury or claim is reported to DSMBI in writing within seventy-two (72) hours of the occurrence of any such event. Customer will also provide any information in regard to such event that DSMBI reasonably requests.

11. Default

- (a) The occurrence of one or more of the following in clauses (a)-(e) below will constitute an Event of Default under this Lease:
- (b) Customer fails to pay when due any rental payment or any other payment due under this Lease or fails to perform its obligations under Section 9 of this Lease:
- (c) Customer fails to perform or observe any other term or condition under this Lease and such failure remains unremedied for more than ten (10) days after such failure to perform or observe;
- (d) Customer or any person or entity which controls more than fifty percent (50%) of Customer's equity (a "Control Person") or any guarantor of any of Customer's obligations hereunder (a "Guarantor") (i) becomes insolvent, (ii) becomes subject to any voluntary or involuntary bankruptcy or reorganization proceedings, (iii) commits an act of bankruptcy, (iv) admits in writing its inability to pay its debts as they become due or (vii) enters into any type of voluntary or involuntary liquidation or dissolution;
- (e) Customer, any Control Person or any Guarantor defaults under any other agreement with DSMBI or any affiliate of DSMBI; and
- (f) Any letter of credit, guaranty or other security given to secure the performance of Customer's obligations under this Lease expires, terminates or in the reasonable opinion of DSMBI becomes worthless.

Upon the occurrence of an Event of Default, DSMBI will have the option to declare the entire balance of rent for the remainder of the stated lease term immediately due and payable and to accelerate and make immediately due and payable any other amounts owing under this Lease. DSMBI will also have the option to retake and retain any or all of the Equipment free of all rights of Customer without any further liability or obligation to redeliver any of the Equipment to Customer, and Customer hereby grants DSMBI the right to enter upon any premises where all or any of the Equipment is located in order to take possession of and remove such Equipment. (Notwithstanding the foregoing, if an Event of Default occurs under clause (c) above, such accelerations will occur automatically without the need for declaration.) Customer will pay to DSMBI's on demand all fees; costs and expenses incurred by DSMBI in enforcing its all other remedies provided in the Lease or exist in at law or in equity. No action taken by DSMBI pursuant to this Section 11 or Section 13 will release Customer from Customer's covenants, obligations and indemnities provided under this Lease, including but not limited to Customer's obligation for the payment of rentals provided in the Lease. If DSMBI retakes possession of the Equipment or any part of the Equipment and there is at the time of such retaking, in upon or attached to such repossessed Equipment, any other property, goods or things of value owned by Customer or in the custody or control of Customer, DSMBI is authorized to take possession of such other property, goods or things and hold the same for Customer, at Customer's sole cost, either in DSMBI's possession or in public storage, at DSMBI's sole discretion.

12. DSMBI's RIGHT TO CURE

If Customer defaults in any of its obligations under this Lease, whether or not an Event of Default then exists, DSMBI may pay all amounts or perform or cause to be performed all obligations required to be paid or performed by Customer under this Lease and recover from Customer as additional rent all amounts so paid or the reasonable value of all services so performed.

13. Set-Off

Without limiting any other provision of this Lease, upon the occurrence of an Event of Default, DSMBI will have the immediate right, without notice, demand or other action, to set-off against Customer any amounts DSMBI may hold as prepayments or deposits for DSMBI liabilities to Customer whether or not then due to Customer. Unless otherwise prohibited by law, DSMBI will be deemed to have exercised such right to set-off and to have made a charge against any such sums immediately upon the occurrence of any Event of Default by Customer.

14. Assignment, Amendment, Modification, Miscellaneous

- (a) Customer will not have the right to assign this Lease or to sublet, rent or otherwise hire out or transfer possession of any of the Equipment to any person or entity other than DSMBI, without the prior written consent of DSMBI. DSMBI may assign this Lease and the rentals reserved under this Lease. If DSMBI makes such an assignment, the assignee will acquire all rights and remedies possessed by or available to DSMBI under this Lease.
- (b) This Lease contains the entire agreement between the parties pertaining to the subject matter of this Lease. No agreements, representations or understandings not specifically contained in this Lease will be binding upon any of the parties hereto unless reduced to writing and signed by the parties to be bound thereby. Any amendment, modification or addendum to this Lease will not be binding on DSMBI unless signed by an authorized officer of DSMBI. This Lease will be governed as to its construction, interpretation and effect by the laws of the *State of California* without regard to principles of choice of laws.
- (c) In the event of any legal action or other proceeding between the parties regarding this Agreement, the prevailing party shall be entitled to the payment by the losing party of its reasonable attorneys' fees, court costs and litigation expenses, as determined by the court.



CONTRACT INSURANCE REQUIREMENTS FOR MOBILE/MODULAR BUILDINGS

RE: Unit #: _____ Serial #: _____ Insurance Valuation: \$ _____

(Section 9 of Lease Agreement)

<u>COMMERCIAL GENERAL LIABILITY:</u>	\$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage; Or combined single limit of \$1,000,000 DESIGN SPACE MODULAR BUILDINGS must be listed as "ADDITIONAL INSURED"
<u>COMMERCIAL PROPERTY:</u>	Special or Broad Form to include ALL LEASED UNITS, \$500 maximum deductible (Flood insurance required for Units located on a Flood Plain) DESIGN SPACE MODULAR BUILDINGS must be listed as "LOSS PAYEE"
<u>CANCELLATION NOTICE:</u>	30 days written notice

Design Space Modular Buildings will waive the contractual requirement that you provide property insurance that protects Design Space Modular Buildings and will waive certain liabilities to Design Space Modular Buildings as outlined below.

Daily Rate: Waiver for Damage to Building \$ 1.00/day/unit

Note: WAIVERS ARE NOT INSURANCE COVERAGE - The waivers do not relieve you of any liabilities to parties other than Design Space Modular Buildings and, as set forth below, certain liabilities to Design Space Modular Buildings are not waived.

What is Waived:

Liability: There is no waiver available for General Liability. Please refer to your obligation under Section 9 of the lease agreement and as summarized above for the insurance requirements for General Liability coverage.

Damage Waiver: We waive (a) your obligation under the lease agreement to carry commercial property insurance and (b) your liability to us for repair or replacement of the building structure for loss or damage resulting from fire, lightning, flood, windstorm, or explosion. You will remain liable to us for the first \$500 of damage per unit. Except, customer will not be relieved of liability if Customer violates any other provision of this Lease or if damage results from theft, vandalism, negligence, misuse or abuse.

If you want to accept the property waiver complete item 1 and 2. If you elect no waiver, complete item 2.

1. YES, I (the Lessee) want to take advantage of the Damage Waiver option as outlined above.

Please bill me for the quoted rate which will appear on my monthly invoice. The waiver is subject to cancellation and the other terms and conditions set forth in the lease agreement.

2. I (the Lessee) have Insurance in accordance with Section 9 of the lease agreement with respect to any category not waived. I will deliver a certificate of insurance to DSMB WITHIN 14 DAYS OF EQUIPMENT DELIVERY as required by Section 9 of the lease agreement. DSMB has provided the 14 day grace period as a convenience to customers. I understand that time is of the essence and that if I do not deliver the certificate of insurance within the grace period, I will be in default under the lease agreement and DSMB at its option may, among other actions, impose a one-time fee for processing of up to One Hundred Dollars (\$100) and may assess as additional rent an uninsured lessee fee of ten percent (10%) of the monthly rental from the start of the lease term until the required insurance certificate is delivered to DSMB.

INSURANCE COMPANY: _____ AGENT NAME: _____

INSURANCE COMPANY ADDRESS: _____

AGENT PHONE NO. : _____ AGENT FAX NO.: _____

ACKNOWLEDGEMENT

SIGNATURE OF LESSEE OR AUTHORIZED AGENT

PRINT NAME

DATE

NOTE: In the absence of a response within 14 days of the date of this correspondence the terms outlined under item 2 will apply

Mail All Certificates To: Design Space Modular Buildings **E-Mail Certificates To:** Ar101@DesignSpaceMod.com
10631 Banana Avenue
Fontana, CA 92337